IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

MFA.No. 270 of 2001(B)

OPMV.39/1995 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, PALA

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APPELLANT/PETITIONER:

JANAKYAMMA, KOTTAKAKATHU, ERATTUPETTA, CHENNADU, KOTTAYAM.

BY ADV. SRI.T.P.VARGHESE
SRI.THOMAS T.VARGHESE

RESPONDENTS/RESPONDENTS:

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1. R.RAMAKRISHNA CHETTIAR, MUNDAMATTOM, PULIYANNOOR P.O.

2. VIJAYAKUMAR S/O.BHASKARAN NAIR, MALANADU DEPARTMENT, SETTLEMENT PARATHODU, EDAKUNNAM.

3. N.KRISHNAPILLAI, ADVOCATE, KANAKALAYAM, PONKUNNAM.

4. UNITED INDIA INSURANCE CO.LTD., DAIVA SAHAYAM BUILDING, PONKUNNAM.

R3 BY ADV. SRI.M.NARENDRA KUMAR
SRI.SALISH ARAVINDAKSHAN
R4 BY ADV. SRI.A.A.MOHAMMED NAZIR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13.11.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.F.A.No.270 of 2001

Dated, this the 13th day of November, 2007

JUDGMENT

The sister of the deceased is the appellant. On 20.6.1989 deceased Sreedharan Nair sustained injuries in a motor vehicle accident. He was taken to hospital. While undergoing treatment he died on 15.7.1989. His sister filed Original Petition claiming compensation alleging that accident occurred due to the negligence of the driver of the vehicle. Respondents 1 and 3 though entered appearance did not file any written statement. Respondent No.2 remained exparte. Insurer alone contested the matter. It was contended that insurer is not liable to indemnify the insured. Quantum of compensation claimed was denied. Tribunal found that accident occurred due to the negligence of driver of the bus. But it did not accept the contention of the appellant that death was due to the direct result of the accident. So the Tribunal treated it as a case of injury and an amount of Rs.34,400/- was awarded as compensation. Dissatisfied with the quantum of compensation the claimant herself has filed this appeal.

2. Learned counsel appearing for the appellant/claimant has argued that the Tribunal went wrong in treating it as a case of injury. It is argued that Tribunal ought to have been treated it as a case of death and compensation awarded. Counsel relied on the decisions reported in **Sardara Singh v. Chanan Singh**

(AIR 1933 Lahore 770) and **Governor General of India in Council v. Bhanwari Devi (1958-65 ACJ 114)**. The principle laid down in those decisions can have no application to the facts of this case because those two cases arose from fatal accident case. But in the case of motor vehicle accident Section 165(1) of the Motor Vehicles Act provides that compensation is to be paid for injury as well as for death. In this case evidence shows that the victim died after 25 days due to tetanus. It cannot be held that that was a direct result of accident. So the finding of the Tribunal that it was a case of injury is correct.

3. The only question arising for consideration is whether any additional compensation is to be paid. Though the Tribunal treated it as a case of injury the compensation awarded under various heads shows that compensation was determined treating it as a case of death Tribunal awarded compensation for gratuitous service and loss of estate. But no amount was awarded for the fracture and crush injury to the right foot. I do not propose to interfere with the quantum of compensation awarded by the Tribunal as it can be adjusted on other counts. I am of the considered opinion that the Tribunal ought to have awarded an additional compensation of Rs.10,000/- for the fracture and crush injuries, etc. Thus the appellant is entitled to get an additional compensation of Rs.10,000/-**.**

In the result, appeal is allowed in part. An award is passed in favour of the appellant authorising her to recover an amount of Rs.10,000/- more from the respondent with 6% interest per annum from the date of petition till the date of

realisation. Insurer is directed to deposit the amount. On deposit, appellant can withdraw the entire amount.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR, J.

M.F.A.No.270 of 2001

JUDGMENT

13th November, 2007.